IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1427 OF 2003
IN
SUIT NO.1087 OF 1986

Manohar Balwant Kawali & Ors. ...Plaintiffs
Vs.
Suresh Narayan Kawali & Ors. ...Defendants

Mr. M.K.Nesari for Plaintiffs

CORAM: SMT.R.S.DALVI,J.
DATED: 8TH JULY, 2005

P.C.

1. The Plaintiff claims 1/4th share in the suit premises upon partition and other ancillary benefits. Several applications have been taken earlier in the suit. The order for giving the list to Defendants has been earlier passed. A further order in terms of the minutes of the Order signed by the Plaintiffs, Defendant No.1 and the then Respondents 1 and 2 against transfer of the suit property and for giving accounts to the Plaintiff have also been filed.

2. The Plaintiff's Advocate has changed during pendency of the suit. Mr.Nesari who now appears for the Plaintiffs, is the second Advocate. The Plaintiff's suit came to be dismissed for default on 24th February, 2000. Mr.Nesari has produced the Xerox copy of the Board of the Court of that day. The name of the previous Advocate is shown as the Advocate for

the Plaintiff. Mr.Nesari therefore, contends that he had no notice of this suit being on board.

3. This Notice of Motion has been taken out more than three years thereafter. It is the Plaintiff's case that the Plaintiffs and their Advocate came to know of the order of dismissal for default when they made enquiry about the suit. Hence, they have taken out this Notice of Motion for restoration of the suit. The Notice of Motion has been served by registered post upon the Defendants 1 to 12 in May, 2003. It has been served by personal service upon Defendants 13 and 14 on 14th June, 2003. No affidavit in reply is filed. Hence, order.

O R D E R

1. Notice of Motion is made absolute in terms of prayer clauses (a) & (b).

. N.O.C.

2. The suit is restored to file.

3. The pleadings are complete. The Plaintiff has to file affidavit of documents which shall be done within 4 weeks. Suit to appear in the normal course.

(SMT.R.S.DALVI,J.)